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10/522,585	01/30/2006	Norman Wittke	87305.0040	5652
36734 7590 03/20/2008 BAKER & HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304				
EXAMINER				
MERLINO, ALYSON MARIE				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/522,585

**Applicant(s)**

WITTKKE ET AL.

**Examiner**

ALYSON M. MERLINO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The examiner acknowledges applicant's amendments to claims 1-15 filed 30 November 2007.

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the Bowden cable, multi-link transmission, pushing element chain, hydraulic system, the closed door opener closing plate, and the roller element must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claims 8 and 14 are objected to because of the following informalities:
  - a. In regards to claim 8, the word "the" should be deleted in the phrase "wherein the release reactors."
  - b. In regards to claim 14, the word "closed" should be deleted in the phrase "wherein a closed" since this word is repeated. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. **Claim 9 is rejected** under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant recites in claim 9 that the transfer element, which is assumed to be lock catch counterpart 3 as per the specification, is designed as a Bowden cable, multi-link transmission, pushing element chain or hydraulic system, however, the specification does not give proper support to comprehend how the components listed can replace the solid structure of the lock catch counterpart 3 shown in the figures. Since there is no

indication in the specification how the components, such as the Bowden cable, will be able to function in the same manner as the solid structured lock catch counterpart shown in the figures, the examiner cannot ascertain how the listed replacements for the counterpart in claim 9 will be configured to actuate in the same manner as the counterpart and couple with the remaining components of the device in the figures and therefore will consider the transfer element of claim 9 as the element 3 depicted in the figures.

6. **Claim 15 is rejected** under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim recites a "roller element" which is not described in the text of the specification or clearly depicted in the drawings in a way that one could ascertain which component of applicant's invention is the roller element. For examination purposes, the claim will be given a broad interpretation.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. **Claims 8 and 9 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. **Claim 9** recites the limitation "the transfer element" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is unclear

what component applicant is referring to in the claim in view of claim 1, however, in view of the specification it seems as though the "transfer element" is equivalent to the "lock catch counterpart" of claim 1. For examination purposes, the transfer element recited in claim 9 will be considered as the equivalent to the lock catch counterpart of claim 1 until further clarification from applicant.

10. **Claims 8 and 9 are rejected** under 35 U.S.C. 112, second paragraph, as being improperly written Markush claims. See MPEP 2173.05(h). For examination purposes, the claims will be considered as Markush claims until further clarification from applicant.

11. **Claim 13** recites the limitation the "change-over" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is unclear what component applicant is referring to in the claims in view of claim 1, however, in view of the specification it seems as though the "change-over" is equivalent to the "transmission element" of claim 1. For examination purposes, the change over will be considered equivalent to the transmission element of claim 1 until further clarification from applicant.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. **Claims 1-9, 11-13, and 15 are rejected** under 35 U.S.C. 102(b) as being anticipated by Fuss (DE 1 138 334).

14. **In regards to claims 1 and 9**, Fuss discloses a door opener (Figure 1) for releasing a door, which is provided with a lock catch counterpart 12 (solid-structured), with a controllable securing element 22 to secure the door opener against unauthorized opening of the door. Fuss discloses an ejector 16, 27 for ejecting a lock catch 10 from the lock catch counterpart, and a transmission element 14 between the lock catch counterpart and the ejector (Figure 2) with which a force initiated by the lock is transferred to the ejector (Figures 4-6).

15. **In regards to claim 2**, Fuss discloses that the ejector is mounted on the lock catch counterpart (Figure 4).

16. **In regards to claim 3**, Fuss discloses that the ejector includes a slide plate (end of ejector near reference character 12b, Figure 5) that is mounted on the lock catch counterpart so that it swivel (Figures 4-6).

17. **In regards to claim 4**, Fuss discloses that a swivel axis (axis running through plate from the tip of the ejector near reference character 27 back through the direction of the spring, Figure 6) of the slide plate runs parallel to the movement direction of the lock catch counterpart (Figure 6).

18. **In regards to claim 5**, Fuss discloses that the lock catch counterpart is designed as a swivel catch (apparent from movement in Figure 6) and that the swivel axis of the slide plate runs perpendicular to an axis of the swivel catch (axis running through pin 13, Figure 6).

19. **In regards to claim 6**, Fuss discloses that the lock catch counterpart is designed as a sliding catch, especially, a linear sliding catch (catch slides within the opener through a linear movement in Figures 5 and 6).
20. **In regards to claim 7**, Fuss discloses that the transmission element includes a lever connection (Figure 1) with a controlled two-armed change-over (apparent from Figures 1-3) in which one lever arm (end of 14 near reference character 22a, Figure 3) serves as a locking element for the lock catch counterpart (engagement with securing element 22 locks the counterpart, Figures 1-3), and that another lever arm (middle portion near reference character 14, Figure 2) is in active connection with a pin 29 that engages with the slide plate (Figures 4-6).
21. **In regards to claim 8**, Fuss discloses that the "release reactors" 26 for the securing element are provided that achieve locking and unlocking actuation magneto-restrictively (Figures 1-3).
22. **In regards to claims 11**, Fuss discloses that the transmission element 12 is prestressed with a prestress element 17.
23. **In regards to claim 12**, Fuss discloses a prestress element 31 is provided to adjust a prestress between the lock catch counterpart and the transmission element (Figure 1).
24. **In regards to claim 13**, Fuss discloses a pressure piece 31 is provided between the lock catch counterpart and the change-over of the transmission element for calibrating purposes (Figures 1-3).



25. **In regards to claim 15**, Fuss discloses a roller element 12c (lock catch rolls over surface, Figure 5).
26. **Claims 1, 8-12, 14, and 15 are rejected** under 35 U.S.C. 102(b) as being anticipated by Fuss (US-4838591).
27. **In regards to claims 1 and 9**, Fuss discloses a door opener (Figure 1) for releasing a door, which is provided with a lock catch counterpart 4 (solid-structured), with a controllable securing element 25 to secure the door opener against unauthorized opening of the door. Fuss discloses an ejector 9 for ejecting a lock catch from the lock catch counterpart, and a transmission element 8 between the lock catch counterpart and the ejector (Figure 1) with which a force initiated by the lock is transferred to the ejector (Figures 1-4).
28. **In regards to claim 8**, Fuss discloses that the "release reactors" 20 for the securing element are provided that achieve locking and unlocking actuation mechanically (Figures 1-4).
29. **In regards to claims 11**, Fuss discloses that the transmission element 8 is prestressed with a prestress element 10.
30. **In regards to claim 12**, Fuss discloses a prestress element 10 is provided to adjust a prestress between the lock catch counterpart and the transmission element (Figure 1).
31. **In regards to claim 14**, Fuss discloses a closed cover plate (portion of component 1 near reference character 9, Figure 2).

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32. **In regards to claim 15**, Fuss discloses a roller element (curved portion of 4 between reference characters A and 6, Figure 2).

***Claim Rejections - 35 USC § 103***

33. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

35. **Claim 10 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Fuss (DE 1 138 334) in view of Cavestri (EP 0 851 077 A1).

36. **In regards to claim 10**, Fuss discloses the door opener as applied to claim 1 above, having a front part (portion near reference character 12, Figure 5) and base part (portion near reference character 12c, Figure 4) of the lock catch counterpart, but fails to disclose that the front part can be adjusted relative to the base part. Cavestri teaches

a door opener similar to the opener disclosed by Fuss, having a lock catch counterpart 13 with a front part 37 being adjustable by slots 44 to base part 35. Since the inclusion of adjusting components on the lock catch counterpart would not affect the counterparts ability to engage with the lock catch, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the lock catch counterpart adjustable in order to accommodate various lengths of lock catches and door sizes.

37. **Claim 14 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Fuss (DE 1 138 334) in view of Vdacchino et al. (US-4984835).

38. **In regards to claim 14**, Fuss discloses the door opener as applied to claims 1-9 and 11-13 above, but fails to disclose that a plate covers the opener. Vdacchine et al. teaches a door opener housed in a housing with a plate 16 covering the components of the opener. Since the inclusion of a plate on the door opener would not affect the opener's engagement ability with the lock catch, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a plate in order to secure and protect the components of the opener.

#### ***Response to Arguments***

39. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

40. In regards to applicant's remarks concerning the objection to the drawings and the 112, first paragraph, rejection of claim 9, the objection is maintained because the addition of the components not shown in the drawings, such as the Bowden cable, would require the design of the structure of applicant's device to be adjusted to

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accommodate these components. In regards to the 112, first paragraph, rejection of claim 9, as noted in the 112, first paragraph, rejection of claim 9 set forth above, the claim was given a broad interpretation, taking into consideration the "solid structured" lock catch counterpart of the figures.

41. In regards to claim 15, the 112, first paragraph, rejection is maintained because the figures and specification were not amended to clarify the "roller element." The claim was given a broad interpretation for examination purposes, as noted above.

42. In regards to applicant's remarks concerning the 112, second paragraph, rejection of claim 9, applicant did not amend the claim to overcome the rejection, and therefore, the rejection is maintained.

43. It is strongly suggested that in order to clarify the 112 issues set forth above, applicant use consistent terminology when referring to the components of the device.

44. The examiner appreciates applicant's amendments to the specification and claims 1, 4, 5, 7, and 12, and therefore, the objections to the specification and these claims set forth in the previous office action are withdrawn.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALYSON M. MERLINO whose telephone number is (571)272-2219. The examiner can normally be reached on Monday through Friday, 7:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia L Engle/  
Supervisory Patent Examiner, Art  
Unit 3673

/A. M. M./  
Examiner, Art Unit 3673  
March 16, 2008